

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PNC EQUIPMENT FINANCE, LLC, a	:	
Delaware limited liability company, successor	:	Case No. 13-829
to PNCEF, LLC, an Indiana limited liability	:	
company, dba PNC Equipment Finance, fka	:	<u>COMPLAINT</u>
National City Commercial Capital Company,	:	
LLC, successor-by-merger to National City	:	
Commercial Capital Corporation	:	
995 Dalton Avenue	:	
Cincinnati, OH 45203,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
GREGORY SMITH	:	
6735 Laurian Wood Drive NW	:	
Atlanta, GA 30328	:	
	:	
and	:	
	:	
ROBERT PURDY	:	
408 Forest Ridge Drive	:	
Aiken, SC 29803,	:	
	:	
Defendants.	:	

Plaintiff PNC Equipment Finance, LLC, a Delaware limited liability company, successor to PNCEF, LLC, an Indiana limited liability company, dba PNC Equipment Finance, fka National City Commercial Capital Company, LLC, successor-by-merger to National City Commercial Capital Corporation (“Plaintiff”), hereby pleads, alleges, avers and states as follows for its Complaint against Defendants, Gregory Smith (“Mr. Smith”) and Robert Purdy (“Mr. Purdy”) (collectively, the “Defendants”).

PARTIES

1. Plaintiff is a Delaware limited liability company with its principal offices located at 995 Dalton Avenue, Cincinnati, Ohio 45203. Plaintiff's sole member is PNC Bank, National Association with its principal offices located in Wilmington, Delaware. Plaintiff is successor to PNCEF, LLC, fka National City Commercial Capital Company, LLC, successor-by-merger to National City Commercial Capital Corporation.

2. Upon information and belief, Defendant Mr. Smith is a Georgia resident with a last known address of 6735 Laurian Wood Drive NW, Atlanta, Georgia 30328.

3. Upon information and belief, Defendant Mr. Purdy is a South Carolina resident with a last known address of 408 Forest Ridge Drive, Aiken, South Carolina 29803.

JURISDICTION AND VENUE

4. This Court possesses diversity subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(A)(1) as Plaintiff and each of Defendants are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of costs and interest.

5. Venue is proper in this judicial district and Defendants are subject to personal jurisdiction herein by virtue of the forum selection clause(s) contained in the instrument(s) giving rise to this action.

CHOICE OF LAW

6. Ohio law governs this action as agreed to by the parties in the instrument(s) giving rise to this action.

GENERAL ALLEGATIONS

7. On or about October 2, 2006, The Trinity Group Partnership, LLC ("Trinity Group") and National City Commercial Capital Corporation ("NC4") entered into that certain

Loan and Security Agreement (the “Loan Agreement”) pursuant to which NC4 agreed, upon compliance by Trinity Group with certain conditions precedent, to loan certain funds to Trinity Group as documented by one or more promissory notes. A true and accurate copy of the Loan Agreement is attached hereto, and incorporated herein, as Exhibit “A.”

8. In accordance with the terms of the Loan Agreement, NC4 loaned \$114,332.00 to Trinity as reflected by that certain Promissory Note (the “Note”), dated October 2, 2006, in the principal sum of \$114,332.00 which Trinity Group executed and delivered to NC4. A true and accurate copy of the Note is attached hereto, and incorporated herein, as Exhibit “B.”

9. In order to induce NC4 to enter into, and loan funds to the Trinity Group under, the Loan Agreement, Mr. Smith executed an Agreement of Guaranty (the “Smith Guaranty”) in favor of NC4, its successors and assigns. A true and accurate copy of the Smith Guaranty is attached hereto, and incorporated herein, as Exhibit “C.”

10. In order to induce NC4 to enter into, and loan funds to the Trinity Group under, the Loan Agreement, Mr. Purdy executed an Agreement of Guaranty (the “Purdy Guaranty”) in favor of NC4, its successors and assigns. A true and accurate copy of the Purdy Guaranty is attached hereto, and incorporated herein, as Exhibit “D.”

11. Trinity Group defaulted under the Loan Agreement and Note on or before December 1, 2008, by, in part, failing to remit monthly payments when due.

12. On or about May 14, 2010, the State Court of Fulton County, State of Georgia entered and ordered default judgment (the “Judgment”) against the Trinity Group and in favor of National City Commercial Capital Company, LLC, successor-by-merger with NC4 in the amount of \$85,774.07, plus post-judgment interest at the legal rate authorized by the laws of the State of Georgia. A true and accurate copy of the Order Granting Motion for Default Judgment

against Defendant the Trinity Group Partnership, LLC is attached hereto, and incorporated herein, as Exhibit “E.”

13. As successor to PNCEF, LLC, fka National City Commercial Capital Company, LLC, successor-by-merger with NC4, Plaintiff is the current holder of the Judgment.

14. Despite demand, the Trinity Group has failed or refused to pay the Judgment and the full amount plus interest remains due and owing to Plaintiff.

CAUSE OF ACTION I - BREACH OF GUARANTY MR. SMITH

15. Plaintiff restates and incorporates by reference, as if fully rewritten herein, the allegations in Paragraphs 1 through 14, above.

16. Pursuant to the terms of the Smith Guaranty, Mr. Smith unconditionally guaranteed to Plaintiff the prompt performance of all covenants and agreements by Trinity Group under the Loan Agreement and payment of all principal and interest on any promissory note issued pursuant to the Loan Agreement as well as any additional sums for which the Trinity Group became liable under the Loan Agreement.

17. Given the Trinity Group’s default, Mr. Smith is liable to Plaintiff for payment of all principal and interest under the Note as reflected in the Judgment.

18. Pursuant to the terms of the Smith Guaranty, Mr. Smith is further liable to Plaintiff for all reasonable attorneys’ fees and other costs and expenses incurred by reason of any default or the exercise of remedies under the Smith Guaranty or Loan Agreement.

19. Despite demand, Mr. Smith failed or refused to pay the amounts due under the Loan Agreement and Note as reflected by the Judgment, and said amount remain due and owing to Plaintiff.

20. Mr. Smith is, therefore, indebted to Plaintiff under the terms of the Smith Guaranty in the amount of \$128,855.91, plus interest at the applicable rate, reasonable attorneys' fees and costs.

CAUSE OF ACTION II - BREACH OF GUARANTY MR. PURDY

21. Plaintiff restates and incorporates by reference, as if fully rewritten herein, the allegations in Paragraphs 1 through 20, above.

22. Pursuant to the terms of the Purdy Guaranty, Mr. Purdy unconditionally guaranteed to Plaintiff the prompt performance of all covenants and agreements of Trinity Group under the Loan Agreement and the payment of all principal and interest on any promissory note issued pursuant to the Loan Agreement as well as any additional sums for which the Trinity Group became liable under the Loan Agreement.

23. Given the Trinity Group's default, Mr. Purdy is liable to Plaintiff for payment of all principal and interest under the Note as reflected in the Judgment.

24. Pursuant to the terms of the Purdy Guaranty, Mr. Purdy is further liable to Plaintiff for all reasonable attorneys' fees and other costs and expenses incurred by reason of any default or the exercise of remedies under the Purdy Guaranty or Loan Agreement.

25. Despite demand, Mr. Purdy failed or refused to pay the amount due under the Loan Agreement and Note as reflected by the Judgment, and said amount remains due and owing to Plaintiff.

26. Mr. Purdy is, therefore, indebted to Plaintiff under the terms of the Purdy Guaranty in the amount of \$128,855.91, plus interest at the applicable rate, reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff prays for judgment in its favor as follows:

- a. With respect to Cause of Action I, against Mr. Smith in the amount of \$128,855.91, plus interest at the applicable rate, reasonable attorneys' fees and costs;
- b. With respect to Cause of Action II, against Mr. Purdy in the amount of \$128,855.91, plus interest at the applicable rate, reasonable attorneys' fees and costs; and
- c. For such other and further relief as is just and equitable.

Respectfully submitted,

/s/ Susan K. Cliffl

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